

Message Text

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ACTION NEA-16

INFO OCT-01 ISO-00 SCS-03 SCA-01 L-03 H-03 CIAE-00 INR-11

NSAE-00 RSC-01 SSO-00 INRE-00 SY-04 PRS-01 DRC-01

DODE-00 SS-20 NSC-07 NSCE-00 /072 W

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O 071203Z AUG 74

FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 3135

C O N F I D E N T I A L NEW DELHI 10466

FOLNG SENT NEW DELHI FM CALCUTTA DATED 07 AUG.

QUOTE: CALCUTTA 1610

E.O. 11652: GDS

TAGS: CASC, PFOR, IN

SUBJ: HARCOS/FLETCHER: ACCESS TO TRIAL

REF: CALCUTTA 1609

1. SUMMARY: DEFENSE LAWYER BHOSE INFORMED ME EVENING OF AUGUST 6 THAT PRESIDING JUDGE RULED THAT AFTERNOON (A) TRIAL WILL BE IN CAMERA AND (B) USG WILL NOT RPT NOT BE GRANTED CONSULAR ACCESS. PROSECUTION PRESENTATION PROVIDED VERY LITTLE DETAIL, BUT INVOLVED CLEAR STATEMENT THAT CONSPIRACY TO COMMIT ESPIONAGE IS AT HEART OF THE CASE. TRIAL WILL BEGIN EARLY SEPTEMBER. END SUMMARY.

2. PROSECUTION MAINTAINED THAT FOUR ACCUSED PLUS BELA HARCOS AND BROTHER OF CHINESE ACCUSED IN SAN FRANCISCO CONSPIRED TO COMMIT ESPIONAGE, BUT DID NOT RPT NOT STATE WHAT EXACTLY THEY CONSPIRED TO DO OR FOR WHOM. THE JUDGE'S RULING WAS HEAVILY INFLUENCED BY THE FACT THAT THE HIGH COURT HAD HELD THE BAIL HEARING IN CAMERA WHICH HE SAW AS A PRECEDENT GOVERNING ENTIRE HANDLING OF CASE. HE DID NOT EXPOUND ON REASONS FOR REJECTING MY PLEA FOR ACCESS BUT NO DOUBT FOUND IT INCON-
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SISTENT WITH IN CAMERA PROCEEDING.

3. PRESIDING JUDGE ALSO RULED THAT DEFENSE COULD EXAMINE THE MATERIAL FORMING THE BASIS FOR PROSECUTION'S CASE DURING LAST WEEK OF AUGUST AND THAT TRIAL WILL BEGIN DURING FIRST WEEK OF SEPTEMBER.

4. DEFENSE LAWYERS SEEM TO HAVE BEEN SOMEWHAT DEMORALIZED BY THESE EVENTS AND BY REPORT THAT, IN A CURRENT CASE INVOLVING CHARGES OF ESPIONAGE FOR PAKISTAN ON WHICH THE SAME INVESTIGATING OFFICER IS WORKING, A DEFENSE LAWYER HAS HAD CHARGES BROUGHT AGAINST HIM (I BELIEVE FOR TAKING NOTES AND CARRYING THEM OUT OF THE COURTROOM). BHOSE SAID WIVES OF DUDHWEWALA AND OF COUNSEL FOR CHINESE WERE URGING THEM TO DROP OUT OF THIS CASE. COUNSEL FOR CHINESE DID NOT APPEAR AT YESTERDAY'S HEARING. BHOSE FOR FIRST TIME EXPRESSED SOME CONCERN ABOUT CONTACTS WITH US, ALTHOUGH EXPRESSING DETERMINATION TO KEEP US INFORMED.

5. BHOSE SAID THAT AFTER SEEING TODAY'S PERFORMANCE HE IS CONVINCED THAT THIS JUDGE WILL NOT RPT NOT GRANT BAIL FOR HARCOS AND FLETCHER REGARDLESS OF PROSECUTION STANCE BECAUSE PREVIOUS HIGH COURT RULING ON THE SAME WOULD GOVERN SO FAR AS HE IS CONCERNED. HE STILL PLANS TO FILE BAIL PETITION BUT SO FAR HAS NOT RPT NOT HEARD FROM RELATIVES OF ACCUSED CONCERNING EXPENSES INVOLVED.

6. BHOSE EXPECTS THAT HARCOS AND FLETCHER WILL REFUSE NASAL FEEDING AFTER LEARNING OF THESE RULINGS SO THAT TRULY FORCED FEEDING WILL BE NECESSARY FOR FIRST TIME.

7. FORMAL RULING EXPECTED TO BE AVAILABLE SOMETIME TODAY. BHOSE SAID THAT AFTER STUDYING IT AND MEETING WITH PRISONERS HE WILL MAKE DECISION ON POSSIBLE APPEAL OF IN CAMERA RULING. WE WOULD RECOMMEND THAT ANY FURTHER POSSIBLE APPEAL BY US FOR ACCESS TO THE TRIAL BE MADE ONLY IF DEFENSE DECIDES TO APPEAL THIS RULING. AS A PRACTICAL MATTER WE BELIEVE THAT WE SHOULD NOT PERSONALLY GET FURTHER INVOLVED IN PRESENTING PETITIONS TO THE COURT BUT THAT IF FURTHER APPEALS FROM OUR SIDE ARE TO BE MADE, WE BE AUTHORIZED TO HIRE COUNSEL TO REPRESENT US.

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8. I AM SEEKING AN APPOINTMENT WITH THE CHIEF SECRETARY IMMEDIATELY AFTER HIS RETURN FROM DELHI (POSSIBLY TOMORROW) IN ORDER TO SEE IF ANY OF THE ASSURANCES MADE BY VENKATE-SWARAN (NEW DELHI 10378) HAVE BEEN COMMUNICATED TO HIM AND, IF SO, WHAT HE PLANS TO DO ABOUT IT.
PICKERING
UNQUOTE. MOYNIHAN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSULAR LEGAL ASSISTANCE, COURTS, TRIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 07 AUG 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974NEWDE10466
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740215-0692
From: NEW DELHI
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740867/aaaacfrl.tel
Line Count: 114
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION NEA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: CALCUTTA 1609
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 16 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16-Aug-2002 by WorrelSW>; APPROVED <24 FEB 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: HARCOS/FLETCHER: ACCESS TO TRIAL
TAGS: CASC, PFOR, IN, (HARCOS), (FLETCHER)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005